Supreme Court, U.S.
FILED
DEC 21 1992
OFFICE OF THE CLERK

No. 92 - 621

IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1992

DONALD NEAL RAKE, ET AL.,

Petitioners,

v.

WILLIAM J. WADE, TRUSTEE,

Respondent.

ON WRIT OF CERTIORARI TO THE UNITED STATES
COURT OF APPEALS FOR THE TENTH CIRCUIT

JOINT APPENDIX

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*Counsel of Record

PETITION FOR CERTIORARI FILED SEPTEMBER 28, 1992
CERTIORARI GRANTED NOVEMBER 9, 1992

BEST AVAILABLE COPY

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RELEVANT DOCKET ENTRIES

In Re Rake:

April 29, 1991	Petitioners' Voluntary Chapter 13 Petition
April 13, 1991	Petitioners' Chapter 13 Plan
May 20, 1991	Objection to Chapter 13 Plan, Wade
May 20, 1991	Brief in Support of Objection to Plan, Wade
May 20, 1991	Proof of Claim, Wade
August 2, 1991	Order (denying Objection to Chapter 13 Plan)
August 5, 1991	Notice of Appeal to United States District Court for the Northern District of Oklahoma
August 20, 1991	Order Confirming Chapter 13 Plan
October 24, 1991	Order of consolidation on appeal

In Re Yell:

May 17, 1991	Petitioners' Voluntary Chapter 13 Petition
May 17, 1991	Petitioners' Chapter 13 Plan

June 13, 1991	Objection to Chapter 13 Plan, Wade
June 13, 1991	Brief in Support of Objection to Plan, Wade
June 13, 1991	Proof of Claim, Wade
August 13, 1991	Order (denying Objection to Chapter 13 Plan)
August 16, 1991	Notice of Appeal to United States District Court for the Northern District of Oklahoma
August 19, 1991	Order Confirming Chapter 13 Plan
October 24, 1991	Order of consolidation on appeal

Consolidated Appeals:

December 16, 1991	Order (affirming Bankruptcy Court decisions)
December 30, 1991	Notice of Appeal to United States Court of Appeals for the Tenth Circuit
July 1, 1992	Opinion (reversing District Court)

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

IN RE:

DONALD N. RAKE	)	Case No. 91-01685-C
LINDA J. RAKE	)	Chapter 13
Debtor(s).	)	

CHAPTER 13 PLAN

Length of Plan:	24 months.
PLAN PAYMENT:	Debtor(s) shall pay $435.00 per month. The Trustee shall deduct the Trustee's percentage fee from each payment.
COMMENCEMENT DATE:	Plan payments shall commence on or before 45 days after the Chapter 13 Petition is filed.

PRIORITY CLAIMS: (To be paid in full without interest)

CLAIMANT	DESCRIPTION	AMOUNT	HOW PAID PER MONTH
Carpenter & Carpenter	Atty Fees	$400.00	8 payments @ $50.00
IRS	taxes	$535.00	24 payments @ $22.29/mo.
Ok Tax Comm.	taxes	$388.00	24 payments @ $16.17/mo.
Tulsa Co. Treas.	taxes	$769.00	24 payments @ $32.04/mo.

Note: Secured creditors shall retain their liens to the extent of the value stated above. The allowed secured claim of each secured creditor shall be the amount of the collateral, as indicated above, or the amount of the claim, whichever is the lesser, with the balance of the claim as scheduled or filed being allowed as an unsecured claim, with the lien of the creditor being avoided on the unsecured portion pursuant to 11 U.S.C. §506(d).

HOME MORTGAGE(S): (Debtor's principal residence)

CLAIMANT	DESCRIP-TION	ALLOWED AMOUNT	INTST RATE	MONTHLY PAYMENT PER MONTH
Mid-States Homes	homestead	(post petition amounts paid direct)		
Mid-States Homes	arrearage	$1800	0%	24 @ $75/mo.

UNSECURED CLAIMS: All claims not specifically provided for above and those relegated to unsecured status above shall be paid as general unsecured claims, without priority, on a pro rata basis.

Unsecured Claims per Ch. 13 Statement:	$5463
Claims Relegated to Unsecured Status:	-0-
Total Projected Unsecured Claims:	$5463
Approximate Percentage Payback to Holders of Unsecured Claims:	100%

OTHER PROVISIONS:

1. All property of the Estate under 11 U.S.C. §1306 shall be and remain property of the Estate and all stays shall remain in force and effect until conclusion of the case or other Order of the Court.
2. All claims will be treated as set forth above unless a creditor objects prior to the confirmation hearing and files a claim within ninety (90) days after the first date set for the meeting of creditors called pursuant to 11 U.S.C. §341(a).
3. Creditors who fail to file a claim within the time stated in paragraph 2., above, may not receive any distribution under this Plan.

4. The provisions of Contracts with secured creditors are incorporated herein except as modified by this Plan and the Order Confirming Chapter 13 Plan herein.

/s/ David A. Carpenter
David A. Carpenter, OBA #1498
Harvey C. Carpenter, OBA #1500
4157 South Harvard, Suite 125
Tulsa, Oklahoma 74135
(918) 749-0050

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

IN RE:	)	
RAKE, DONALD NEAL	)	91-01433-C
RAKE, LINDA JEAN	)	Chapter 13
	)	
Debtor(s)	)	

PROOF OF CLAIM

1. The undersigned, who resides at 2535 E. 21st. ST., Tulsa, OK 74114 is the attorney and agent of William J. Wade, Trustee, Box 31601, Tampa, Florida 33631 and is authorized to make this proof of claim on behalf of the claimant.

2. The Debtor(s) was at the time of the filing of the petition initiating this case, and still is indebted to this claimant in the sum of $68,020.62 and $44,017.56 payoff, with arrearages on the note and mortgage being itemized as follows:

PAYMENTS DUE	$2,196.40
INSURANCE ADVANCED	$1,732.20
TAXES ADVANCED	$
LATE FEES	$ 60.00
ATTORNEY FEES	$ 750.00
ADVANCED	$
COURT COSTS ADVANCED	$4,738.62
TOTAL ARREARAGES	

3. The consideration for this debt is the construction of the homestead for the Debtor(s).

4. The writing on which this claim is founded is attached hereto.

5. No judgement has been rendered on the claim.

6. The amount of all payments on this claim has been credited and deducted for the purpose of making this proof of claim.

7. This claim is not subject to any setoff or counterclaim.

8. The undersigned claims the security interest under the writing referred to in paragraph 4 hereof.

9. This claim is a secured claim.

Dated 5/17/91

/s/ Lawrence A. G. Johnson
Attorney for William J. Wade, Trustee

NON-NEGOTIABLE PROMISSORY NOTE - OKLAHOMA
JIM WALTER HOMES, INC.

$96,048.00 30 APRIL 1984

For value received, I, we, or either of us, promise to pay to **JIM WALTER HOMES, INC.**, at the office of said payee, P.O. Box 22601, Tampa, Florida, or at such other place as the holder hereof may designate in writing, the sum of Ninety Six thousand Forty Eight and 00/100 Dollars ($96,048.00), in 240 monthly installments of Four hundred and 20/100 Dollars ($400.20) each, the first installment to become due and payable on the 20 day of August, 1984, and one installment to become due and payable on the 20 day of each succeeding month until the whole of said indebtedness is paid.

Late Charge. For each installment not paid in full within fifteen (15) days of its scheduled due date, Buyer will be charged $5.00 or 5% of the unpaid installment whichever is less.

It is agreed that time is of the essence of this note and that in the event of default in payment of any installment for a period of thirty days, the holder of this note may, at its option, declare all of the remainder of said debt due and collectible and any failure to exercise said option shall not constitute a waiver of the right to exercise the same at any other time.

This note is subject to the terms of a mortgage of even date herewith executed by the makers hereof as mortgagor to the payee hereof as mortgagee encumbering property in Tulsa County, Oklahoma, and more particularly described therein.

I, we, and each of us, whether principal, guarantor, endorser or other party hereto, agree to be jointly and severally bound hereby and do severally waive presentment for payment, notice of non-payment, protest and notice of protest, and agree that extensions of

time for payment may be granted by the holder hereof without notice. It is further agreed that if it becomes necessary to enforce collection and upon referral to an attorney, not a salaried employee of the holder, I/we, or either of us agree to pay a reasonable attorney fee not to exceed 15 per cent of the unpaid debt and all costs of collection.

NOTICE

ANY HOLDER OF THIS CONSUMER CREDIT CONTRACT IS SUBJECT TO ALL CLAIMS AND DEFENSES WHICH THE DEBTOR COULD ASSERT AGAINST THE SELLER OF GOODS OR SERVICES OBTAINED PURSUANT HERETO OR WITH THE PROCEEDS HEREOF. RECOVERY HEREUNDER BY THE DEBTOR SHALL NOT EXCEED AMOUNTS PAID BY THE DEBTOR HEREUNDER.

/S/ Donald N. Rake SEAL

/S/ Linda J. Rake SEAL

_____ SEAL

_____ SEAL

THIS NOTE IS NON-NEGOTIABLE

MORTGAGE - OKLAHOMA - JIM WALTERS, INC.

KNOW ALL MEN BY THESE PRESENTS, That whereas on this 30 day of April 1984 , Donald N. Rake & Linda J. Rake, Husb. & Wife of Tulsa County, State of Oklahoma, hereinafter called Mortgagor, is justly indebted to JIM WALTER HOMES, INC., a corporation of the State of Florida, having its principal office in Tampa, Florida, P.O. Box 22601, Tampa, Florida, 33622, hereinafter called Mortgagee, in the principal sum of Ninety Six thousand and Forty Eight and 00/100 Dollars ($96,048.00) to secure the payment of which Mortgagor has executed one non-negotiable promissory note, of even date herewith, payable to Mortgagee at its office aforesaid or at such other place as the holder thereof may designate in writing, said principal sum being payable as set forth therein, the last installment thereunder being due and payable on the 20 day of July, 2004 to which note reference is hereby made.

NOW, THEREFORE, THIS INDENTURE WITNESSETH: That Mortgagor, for good and valuable consideration, and for the purpose of securing (1) payment of said indebtedness as in said note provided, (2) payment of all other moneys secured hereby, and (3) the performance of all the covenants, conditions, stipulations and agreements herein contained, has mortgaged and hereby mortgages, assigns, transfers, and sets over, unto Mortgagee, its successors and assigns forever, the following described property, real estate and premises, situated in Tulsa County, State of Oklahoma, to-wit:

The South 150' of the East 290.4' of the North 330' of the East 660' of the S1/2, of the SE1/4 of Section 5, T-21-N, R-13-E, of the IBM, Tulsa, County, Oklahoma, according to the U.S. Government Survey thereof. Containing 1.0 acre more of less.

together with all and singular the ways, easements, riparian and other rights, and all tenements, hereditaments and appurtenances thereunto belonging or in anywise appertaining, and all buildings, structures and other improvements now on said land or that hereafter may be erected or placed thereon, all fixtures attached thereto, all rents, income, issues and profits accruing and to accrue therefrom, and all judgments, awards of damages and settlements hereafter made as a result or in lieu of any taking of the premises or any part thereof under the power of eminent domain, or for any damage, whether caused by such taking or otherwise, to the premises or the improvements thereon or any part thereof.

TO HAVE AND TO HOLD the above described property unto the Mortgagee, its successors, and assigns.

Mortgagor covenants and agrees with Mortgagee as follows:

1. That Mortgagor is lawfully seized in fee of the premises hereby conveyed; that he has good right to sell and convey the same as aforesaid; that said premises are clear of all encumbrances; and that he will forever warrant and defend the title to said premises against all claims and demands.

2. To pay all sums secured hereby when due. Late Charge. For each installment not paid in full within (15) days of its scheduled due date, Buyer will be charged $5.00 or 5% of the unpaid installment whichever is less.

3. To pay, when due, all taxes and assessments of every type or nature levied or assessed against the premises or upon Mortgagee's interest therein, and any claim, lien or encumbrance against the premises which may be or become prior to this mortgage.

4. To pay all taxes which may be assessed upon this mortgage, or said note, or indebtedness secured hereby, without regard

to any law, heretofore or hereafter enacted, imposing payment of all or any part thereof upon Mortgagee, except the mortgage registration tax to be paid upon the recording of this mortgage. In event of enactment of any law imposing payment of all or any portion of any such taxes upon Mortgagee, or the rendering by any court of competent jurisdiction of a decision that the undertaking by Mortgagor, as herein provided, to pay such tax or taxes is legally inoperative, then unless Mortgagor nevertheless pays such taxes, all sums hereby secured, without any deduction, shall at the option of Mortgagee become immediately due and payable, notwithstanding anything contained herein or any law heretofore or hereafter enacted.

5. To keep the premises insured against loss or damage by fire, lightning, windstorm and such other hazards as may be required by Mortgagee, in form and amount satisfactory to, and in insurance companies approved by Mortgagee. To comply with this provision Mortgagor must deliver the policy or true copy of the policy to Mortgagee to be held without liability. Upon foreclosure of this mortgage or other acquisition of the premises or any part thereto by Mortgagee, said policy shall become the absolute property of Mortgagee. In the event of failure of Mortgagor to insure the premises as herein provided or in the event of the failure of the Mortgagor to deliver the policy of insurance or true copy thereof to the Mortgagee, the Mortgagee shall insure the premises in companies of its choosing and the premium expense incurred by the Mortgagee shall be paid by the Mortgagor.

6. That Mortgagor (i) will not remove or demolish nor alter the design or structural character of any building now or hereafter erected upon the premises unless Mortgagee shall first consent thereto in writing; (ii) will maintain the premises in good condition and repair; (iii) will not commit or suffer waste thereof; (iv) will not cut or remove nor suffer the cutting or removal of any trees or timber on the premises (except for domestic purposes) without Mortgagee's written consent; (v) will comply with all laws, ordinances, regulations,

covenants, conditions and restrictions affecting the premises, and will not suffer or permit any violation thereof.

7. If Mortgagor fails to pay any claim, lien or encumbrance which is prior to this mortgage, or when due, any tax or assessment or insurance premium, or to keep the premises in repair, or shall commit or permit waste, or if there be commenced any action or proceeding affecting the premises or the title thereto, then Mortgagee, at its option, may pay said claim, lien, encumbrance, tax assessment or premium with right of subrogation thereunder, may make such repairs and take such steps as it deems advisable to prevent or cure such waste, and may appear in any such action or proceeding and retain counsel therein, and take such action therein as Mortgagee deems advisable, and for any of said purposes Mortgagee may advance such sums of money as it deems necessary, but no payment by the Mortgagee of any such monies shall be deemed a waiver of the Mortgagee's right to declare the principal sum due hereunder by reason of the default or violation of Mortgagor in any of his covenants hereunder. Mortgagee shall be the sole judge of the legality, validity and priority of any such claim, lien, encumbrance, tax assessment and premium, and of the amount necessary to be paid in satisfaction thereof. Mortgagor will pay to Mortgagee, immediately and without demand, all sums of money advanced by mortgagee pursuant to this mortgage, together with interest on each such advancement at the rate of ten per cent (10%) per annum, and all such sums and interest thereon shall be secured hereby.

8. If default for thirty (30) days be made in payment of any installment of principal or interest of said note or any part thereof, or if default be made in performance of any of Mortgagor's obligations, covenants or agreement hereunder

(a) All of the indebtedness secured hereby shall become and be immediately due and payable at the option of Mortgagee, without notice or demand which are hereby expressly waived, and this

mortgage may thereupon be foreclosed for the entire indebtedness, interest and costs, together with the statutory damages in case of protest. In the event of a foreclosure, the court shall direct a sale of the premises, to be with or without appraisement as Mortgagee may elect.

(b) Mortgagee shall, upon the filing of a petition for the foreclosure of this mortgage, be forthwith entitled to and may at once take the immediate possession of said premises and collect the rents, issues and profits thereof, being liable to account only for those actually received by Mortgagee, or Mortgagee at its option may have a receiver appointed by the court to take possession and control of the premises, and to collect the rents and profits thereof, under the directions of the court, without the proof required by statute, the amount so collected by such receiver shall be applied, under the direction of the court, to the payment of any judgment rendered or amount found due upon the foreclosure of this mortgage.

9. In case the indebtedness secured hereby or any part thereof for collection by suit or action on this mortgage is foreclosed or brought into the hands of an attorney for collection, suit, action for foreclosure, Mortgagor shall be chargeable with all costs and expenses including a reasonable attorney fee not to exceed 15 per cent of the unpaid debt, which shall be immediately due and payable and added to the mortgage indebtedness secured hereby.

10. No delay by Mortgagee in exercising any right or remedy hereunder, or otherwise afforded by law, shall operate as a waiver thereto or preclude the exercise thereof during the continuance of any default hereunder.

11. Any agreement hereafter made by Mortgagor and Mortgagee pursuant to this mortgage shall be superior to the rights of the holder of any intervening lien or encumbrance.

12. For value received, the Mortgagor hereby expressly waives all right of homestead, exemption and stay laws granted by the Constitution and laws of the State of Oklahoma.

13. When all indebtedness secured hereby has been paid, this mortgage and all assignments herein contained shall be void and this mortgage shall be released by Mortgagee at the cost and expense of Mortgagor; otherwise to remain in full force and effect.

14. This mortgage shall inure to and bind the heirs, legatees, devisees, administrators, executors, trustees, successors and assigns of the parties hereto. Whenever used herein, the singular number shall include the plural, the plural the singular, and the use of any gender shall be applicable to all genders.

IN WITNESS WHEREOF, Mortgagor has hereunto set his hand and seal the day and year first above written.

/S/Donald N. Rake (seal)

/S/ Linda J. Rake (seal)

_____(seal)

_____(seal)

STATE OF ARKANSAS}
} ss
COUNTY OF PULASKI}

Before me, the undersigned, a Notary Public, in and for said County and State, on this 30th day of April, 1984, personally appeared Donald N. Rake and Linda J. Rake to me known to be the identical persons who executed the within and foregoing instrument, and acknowledged to me that they executed the same as their free and voluntary act and deed for the uses and purposes therein set forth.

Witness my hand and official seal the day and year last above written.

illegible
Notary Public

My commission expires: illegible

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

IN RE:

RAKE, DONALD N.	)	NO. 91-01433-C
RAKE, LINDA J.	)	CHAPTER 13
Debtor(s)	)	

OBJECTION TO CHAPTER 13 PLAN

Comes William J. Wade, Trustee, holder of the first mortgage upon the principal residence of the Debtor, and objects to the Plan herein for the following reasons:

* The claim of this Creditor is one termed over-secured;

* The Plan does not provide for payment of the true arrearages with interest over the life of the plan;

* The Plan does not provide for attorney fees.

A brief in support of the objection to the Plan is submitted herewith. The Claim filed by this Creditor is referred to herein by reference.

JOHNSON & SWENSON
BY /s/ Lawrence A. G. Johnson
Lawrence A. G. Johnson
Attorney At Law, #4705
2535 E. 21st. Street
Tulsa, OK 74114
(918) 743-0459
Attorney for William J. Wade, Trustee

(Certificate of Service omitted in printing)

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

IN RE:	)	**Case No. 91-01433-C**
	)	**Chapter 13**
DONALD NEAL RAKE and	)	
LINDA JEAN RAKE,	)	
	)	
Debtors.	)	

ORDER

THE ORDER OF HON. STEPHEN J. COVEY, UNITED STATES BANKRUPTCY JUDGE, HAS PREVIOUSLY BEEN PRINTED IN THE PETITION FOR WRIT OF CERTIORARI, AND MAY BE FOUND AT PAGE A - 13 THEREOF.

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

IN RE:		
ERNEST WILLIAM YELL,	)	Case No. 91-01433-C
MARY KATHERYN YELL,	)	Chapter 13
Debtor(s).	)	

CHAPTER 13 PLAN

Length of Plan:	48 months.
PLAN PAYMENT:	Debtor(s) shall pay $925.00 per month. The Trustee shall deduct the Trustee's percentage fee from each payment.
COMMENCEMENT DATE:	Plan payments shall commence on or before 45 days after the Chapter 13 Petition is filed.

PRIORITY CLAIMS: (To be paid in full without interest)

CLAIMANT	DESCRIPTION	AMOUNT	HOW PAID PER MONTH
Carpenter & Carpenter	Atty Fees	$400.00	10 payments @ $40.00
Oklahoma Tax Commission	1990 taxes	$444.00	29 payments @ $15.31
Osage County Treasurer	Taxes	$371.00	24 payments @ $15.46

SECURED CLAIMS: [exclusive of home mortgage(s)]

	CHRYSLER CREDIT	COMMUNITY FEDERAL C.U.	G.M.A.C.
Total of Secured Claim	$2,582.00	$1,100.00	$5,190.00
Collateral	85 Jeep Cherokee	84 Boat & Mtr	86 Isuzu Trooper
Allowed Secured Claim	$2,582.00	$1,100.00	$5,190.00

Interest Rate	12%	12%	12%
Monthly Payment and How Paid	48 @ $67.99	48 @ $28.89	48 @ $136.67

Note: Secured creditors shall retain their liens to the extent of the value stated above. The allowed secured claim of each secured creditor shall be the amount of the collateral, as indicated above, or the amount of the claim, whichever is the lesser, with the balance of the claim as scheduled or filed being allowed as an unsecured claim, with the lien of the creditor being avoided on the unsecured portion pursuant to 11 U.S.C. §506(d).

HOME MORTGAGE(S): (Debtor's principal residence)

CLAIMANT	DESCRIPTION	ALLOWED AMOUNT	INTST RATE	MONTHLY PAYMENT PER MONTH
Mid States Home	1st Mortgage	Post-petition amounts paid direct by Debtor(s).		
Mid States Home	arrearage	$866.00	0%	48 @ $18.04
Desolate Acres Ranch	Real Property	$13,329.00	0%	48 @ $163.00

UNSECURED CLAIMS: All claims not specifically provided for above and those relegated to unsecured status above shall be paid as general unsecured claims, without priority, on a pro rata basis.

Unsecured Claims per Ch. 13 Statement:	$18,642.00
Claims Relegated to Unsecured Status:	-0-
Total Projected Unsecured Claims:	$18,642.00
Approximate Percentage Payback to Holders of Unsecured Claims:	100%

OTHER PROVISIONS:

1. All property of the Estate under 11 U.S.C. §1306 shall be and remain property of the Estate and all stays shall remain in force and effect until conclusion of the case or other Order of the Court.
2. All claims will be treated as set forth above unless a creditor objects prior to the confirmation hearing and files a claim within ninety (90) days after the first date set for the meeting of creditors called pursuant to 11 U.S.C. §341(a).
3. Creditors who fail to file a claim within the time stated in paragraph 2., above, may not receive any distribution under this Plan.
4. The provisions of Contracts with secured creditors are incorporated herein except as modified by this Plan and the Order Confirming Chapter 13 Plan herein.

/s/ Harvey C. Carpenter
David A. Carpenter, OBA #1498
Harvey C. Carpenter, OBA #1500
4157 South Harvard, Suite 125
Tulsa, Oklahoma 74135
(918) 749-0050

Attorneys for Debtor(s)

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

IN RE:	)	
YELL, ERNEST W.	)	91-01685-W
YELL, MARY K.	)	Chapter 13
	)	
Debtor(s)	)	

PROOF OF CLAIM

1. The undersigned, who resides at 2535 E. 21st. ST., Tulsa, OK 74114 is the attorney and agent of William J. Wade, Trustee, Box 31601, Tampa, Florida 33631 and is authorized to make this proof of claim on behalf of the claimant.

2. The Debtor(s) was at the time of the filing of the petition initiating this case, and still is indebted to this claimant in the sum of $54,012.20 and $37,915.90 payoff, with arrearages on the note and mortgage being itemized as follows:

PAYMENTS DUE	$644.40
INSURANCE ADVANCED	$
TAXES ADVANCED	$
LATE FEES	$ 35.00
A T T O R N E Y F E E S	$750.00
ADVANCED	$
COURT COSTS ADVANCED	$1,429.40

TOTAL ARREARAGES

3. The consideration for this debt is the construction of the homestead for the Debtor(s).

4. The writing on which this claim is founded is attached hereto.

5. No judgement has been rendered on the claim.

6. The amount of all payments on this claim has been credited and deducted for the purpose of making this proof of claim.

7. This claim is not subject to any setoff or counterclaim.

8. The undersigned claims the security interest under the writing referred to in paragraph 4 hereof.

9. This claim is a secured claim.

Dated 6-12-92

/s/ Lawrence A. G. Johnson
Attorney for William J. Wade, Trustee

NON-NEGOTIABLE PROMISSORY NOTE - OKLAHOMA
JIM WALTER HOMES, INC.

$93,657.60 MARCH 26, 1983

For value received, I, we, or either of us, promise to pay to **JIM WALTER HOMES, INC.**, at the office of said payee, P.O. Box 22601, Tampa, Florida, or at such other place as the holder hereof may designate in writing, the sum of Ninety Three thousand Six hundred Fifty Seven and 60/100 Dollars ($93,657.60), in 216 monthly installments of Four hundred Thirty Three and 60/100 Dollars ($433.60) each, the first installment to become due and payable on the 5 day of July, 1983, and one installment to become due and payable on the 5th day of each succeeding month until the whole of said indebtedness is paid.

Late Charge. For each installment not paid in full within fifteen (15) days of its scheduled due date, Buyer will be charged $5.00 or 5% of the unpaid installment whichever is less.

It is agreed that time is of the essence of this note and that in the event of default in payment of any installment for a period of thirty days, the holder of this note may, at its option, declare all of the remainder of said debt due and collectible and any failure to exercise said option shall not constitute a waiver of the right to exercise the same at any other time.

This note is subject to the terms of a mortgage of even date herewith executed by the makers hereof as mortgagor to the payee hereof as mortgagee encumbering property in Osage County, Oklahoma, and more particularly described therein.

I, we, and each of us, whether principal, guarantor, endorser or other party hereto, agree to be jointly and severally bound hereby and do severally waive presentment for payment, notice of non-

payment, protest and notice of protest, and agree that extensions of time for payment may be granted by the holder hereof without notice. It is further agreed that if it becomes necessary to enforce collection and upon referral to an attorney, not a salaried employee of the holder, I/we, or either of us agree to pay a reasonable attorney fee not to exceed 15 per cent of the unpaid debt and all costs of collection.

NOTICE

ANY HOLDER OF THIS CONSUMER CREDIT CONTRACT IS SUBJECT TO ALL CLAIMS AND DEFENSES WHICH THE DEBTOR COULD ASSERT AGAINST THE SELLER OF GOODS OR SERVICES OBTAINED PURSUANT HERETO OR WITH THE PROCEEDS HEREOF. RECOVERY HEREUNDER BY THE DEBTOR SHALL NOT EXCEED AMOUNTS PAID BY THE DEBTOR HEREUNDER.

/S/ Ernest W. Yell SEAL

/S/ Mary K. Yell SEAL

_____ SEAL

_____ SEAL

THIS NOTE IS NON-NEGOTIABLE

MORTGAGE - OKLAHOMA - JIM WALTERS, INC.

KNOW ALL MEN BY THESE PRESENTS, That whereas on this 26 day of March 1983 , Ernest W. and Mary K. Yell, Husb. & Wife of Tulsa County, State of Oklahoma, hereinafter called Mortgagor, is justly indebted to JIM WALTER HOMES, INC., a corporation of the State of Florida, having its principal office in Tampa, Florida, P.O. Box 22601, Tampa, Florida, 33622, hereinafter called Mortgagee,
in the principal sum of Ninety Three thousand Six Hundred Fifty Seven and 60/100 Dollars ($93,657.60) to secure the payment of which Mortgagor has executed one non-negotiable promissory note, of even date herewith, payable to Mortgagee at its office aforesaid or at such other place as the holder thereof may designate in writing, said principal sum being payable as set forth therein, the last installment thereunder being due and payable on the 5 day of June, 2001 to which note reference is hereby made.

NOW, THEREFORE, THIS INDENTURE WITNESSETH: That Mortgagor, for good and valuable consideration, and for the purpose of securing (1) payment of said indebtedness as in said note provided, (2) payment of all other moneys secured hereby, and (3) the performance of all the covenants, conditions, stipulations and agreements herein contained, has mortgaged and hereby mortgages, assigns, transfers, and sets over, unto Mortgagee, its successors and assigns forever, the following described property, real estate and premises, situated in Osage County, State of Oklahoma, to-wit:

Part of the W1/2 of Lot 22, in STONEWOOD ESTATES SECOND, Osage County, State of Oklahoma, according to the Recorded plat thereof, being more particularly described as follows: Beginning at the SW Corner of said lot, thence N89°-50'-58" on the South line of said lot a distance of 58.5 feet N0°-09'-02" W a distance of 175 feet thence

S89°-50'-58"W a distance of 189.84 feet to a point on the West line of said lot., thence S37°-02'-23"E on the West line of said lot a distance of 218.81 feet to the Point of Beginning. Containing .5 acres more or less.

together with all and singular the ways, easements, riparian and other rights, and all tenements, hereditaments and appurtenances thereunto belonging or in anywise appertaining, and all buildings, structures and other improvements now on said land or that hereafter may be erected or placed thereon, all fixtures attached thereto, all rents, income, issues and profits accruing and to accrue therefrom, and all judgments, awards of damages and settlements hereafter made as a result or in lieu of any taking of the premises or any part thereof under the power of eminent domain, or for any damage, whether caused by such taking or otherwise, to the premises or the improvements thereon or any part thereof.

TO HAVE AND TO HOLD the above described property unto the Mortgagee, its successors, and assigns.

Mortgagor covenants and agrees with Mortgagee as follows:

1. That Mortgagor is lawfully seized in fee of the premises hereby conveyed; that he has good right to sell and convey the same as aforesaid; that said premises are clear of all encumbrances; and that he will forever warrant and defend the title to said premises against all claims and demands.

2. To pay all sums secured hereby when due. Late Charge. For each installment not paid in full within (15) days of its scheduled due date, Buyer will be charged $5.00 or 5% of the unpaid installment whichever is less.

3. To pay, when due, all taxes and assessments of every type or nature levied or assessed against the premises or upon Mortgagee's

interest therein, and any claim, lien or encumbrance against the premises which may be or become prior to this mortgage.

4. To pay all taxes which may be assessed upon this mortgage, or said note, or indebtedness secured hereby, without regard to any law, heretofore or hereafter enacted, imposing payment of all or any part thereof upon Mortgagee, except the mortgage registration tax to be paid upon the recording of this mortgage. In event of enactment of any law imposing payment of all or any portion of any such taxes upon Mortgagee, or the rendering by any court of competent jurisdiction of a decision that the undertaking by Mortgagor, as herein provided, to pay such tax or taxes is legally inoperative, then unless Mortgagor nevertheless pays such taxes, all sums hereby secured, without any deduction, shall at the option of Mortgagee become immediately due and payable, notwithstanding anything contained herein or any law heretofore or hereafter enacted.

5. To keep the premises insured against loss or damage by fire, lightning, windstorm and such other hazards as may be required by Mortgagee, in form and amount satisfactory to, and in insurance companies approved by Mortgagee. To comply with this provision Mortgagor must deliver the policy or true copy of the policy to Mortgagee to be held without liability. Upon foreclosure of this mortgage or other acquisition of the premises or any part thereto by Mortgagee, said policy shall become the absolute property of Mortgagee. In the event of failure of Mortgagor to insure the premises as herein provided or in the event of the failure of the Mortgagor to deliver the policy of insurance or true copy thereof to the Mortgagee, the Mortgagee shall insure the premises in companies of its choosing and the premium expense incurred by the Mortgagee shall be paid by the Mortgagor.

6. That Mortgagor (i) will not remove or demolish nor alter the design or structural character of any building now or hereafter erected upon the premises unless Mortgagee shall first consent thereto

in writing; (ii) will maintain the premises in good condition and repair; (iii) will not commit or suffer waste thereof; (iv) will not cut or remove nor suffer the cutting or removal of any trees or timber on the premises (except for domestic purposes) without Mortgagee's written consent; (v) will comply with all laws, ordinances, regulations, covenants, conditions and restrictions affecting the premises, and will not suffer or permit any violation thereof.

7. If Mortgagor fails to pay any claim, lien or encumbrance which is prior to this mortgage, or when due, any tax or assessment or insurance premium, or to keep the premises in repair, or shall commit or permit waste, or if there be commenced any action or proceeding affecting the premises or the title thereto, then Mortgagee, at its option, may pay said claim, lien, encumbrance, tax assessment or premium with right of subrogation thereunder, may make such repairs and take such steps as it deems advisable to prevent or cure such waste, and may appear in any such action or proceeding and retain counsel therein, and take such action therein as Mortgagee deems advisable, and for any of said purposes Mortgagee may advance such sums of money as it deems necessary, but no payment by the Mortgagee of any such monies shall be deemed a waiver of the Mortgagee's right to declare the principal sum due hereunder by reason of the default or violation of Mortgagor in any of his covenants hereunder. Mortgagee shall be the sole judge of the legality, validity and priority of any such claim, lien, encumbrance, tax assessment and premium, and of the amount necessary to be paid in satisfaction thereof. Mortgagor will pay to Mortgagee, immediately and without demand, all sums of money advanced by mortgagee pursuant to this mortgage, together with interest on each such advancement at the rate of ten per cent (10%) per annum, and all such sums and interest thereon shall be secured hereby.

8. If default for thirty (30) days be made in payment of any installment of principal or interest of said note or any part thereof, or

if default be made in performance of any of Mortgagor's obligations, covenants or agreement hereunder

(a) All of the indebtedness secured hereby shall become and be immediately due and payable at the option of Mortgagee, without notice or demand which are hereby expressly waived, and this mortgage may thereupon be foreclosed for the entire indebtedness, interest and costs, together with the statutory damages in case of protest. In the event of a foreclosure, the court shall direct a sale of the premises, to be with or without appraisement as Mortgagee may elect.

(b) Mortgagee shall, upon the filing of a petition for the foreclosure of this mortgage, be forthwith entitled to and may at once take the immediate possession of said premises and collect the rents, issues and profits thereof, being liable to account only for those actually received by Mortgagee, or Mortgagee at its option may have a receiver appointed by the court to take possession and control of the premises, and to collect the rents and profits thereof, under the directions of the court, without the proof required by statute, the amount so collected by such receiver shall be applied, under the direction of the court, to the payment of any judgment rendered or amount found due upon the foreclosure of this mortgage.

9. In case the indebtedness secured hereby or any part thereof for collection by suit or action on this mortgage is foreclosed or brought into the hands of an attorney for collection, suit, action for foreclosure, Mortgagor shall be chargeable with all costs and expenses including a reasonable attorney fee not to exceed 15 per cent of the unpaid debt, which shall be immediately due and payable and added to the mortgage indebtedness secured hereby.

10. No delay by Mortgagee in exercising any right or remedy hereunder, or otherwise afforded by law, shall operate as a waiver

thereto or preclude the exercise thereof during the continuance of any default hereunder.

11. Any agreement hereafter made by Mortgagor and Mortgagee pursuant to this mortgage shall be superior to the rights of the holder of any intervening lien or encumbrance.

12. For value received, the Mortgagor hereby expressly waives all right of homestead, exemption and stay laws granted by the Constitution and laws of the State of Oklahoma.

13. When all indebtedness secured hereby has been paid, this mortgage and all assignments herein contained shall be void and this mortgage shall be released by Mortgagee at the cost and expense of Mortgagor; otherwise to remain in full force and effect.

14. This mortgage shall inure to and bind the heirs, legatees, devisees, administrators, executors, trustees, successors and assigns of the parties hereto. Whenever used herein, the singular number shall include the plural, the plural the singular, and the use of any gender shall be applicable to all genders.

IN WITNESS WHEREOF, Mortgagor has hereunto set his hand and seal the day and year first above written.

/S/ Ernest W. Yell (seal)

/S/ Mary K. Yell (seal)

_____(seal)

_____(seal)

STATE OF OKLAHOMA}
} ss
COUNTY OF TULSA }

Before me, the undersigned, a Notary Public, in and for said County and State, on this 29th day of July, 1983, personally appeared Ernest Yell and Mary Yell to me known to be the identical persons who executed the within and foregoing instrument, and acknowledged to me that they executed the same as their free and voluntary act and deed for the uses and purposes therein set forth.

Witness my hand and official seal the day and year last above written.

/s/ Walter Gliedt
Notary Public

My commission expires:
3-15-87

Walter Gleidt

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

IN RE:

YELL, ERNEST W.	)	NO. 91-01685-W
YELL, MARY K.	)	CHAPTER 13
Debtor(s)	)	

OBJECTION TO CHAPTER 13 PLAN

COMES William J. Wade, Trustee, holder of the first mortgage upon the principal residence of the Debtor, and objects to the Plan herein for the following reasons:

* The claim of this Creditor is one termed over-secured;

* The Plan does not provide for payment of the true arrearages with interest over the life of the plan;

* The Plan does not provide for attorney fees.

A brief in support of the objection to the Plan is submitted herewith. The Claim filed by this Creditor is referred to herein by reference.

JOHNSON & SWENSON
BY: /s/ Lawrence A. G. Johnson
Lawrence A. G. Johnson
Attorney At Law, #4705
2535 E. 21st. Street
Tulsa, OK 74114
(918) 743-0459
Attorney for William J. Wade, Trustee

(Certificate of Service omitted in printing)

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

IN RE:	)	
	)	
ERNEST WILLIAM YELL and	)	Case No. 91-01685-W
MARY KATHRYN YELL,	)	Chapter 13
	)	
Debtors.	)	

MEMORANDUM DECISION

THE ORDER OF HON. MICKEY D. WILSON, UNITED STATES BANKRUPTCY JUDGE, HAS PREVIOUSLY BEEN PRINTED IN THE PETITION FOR WRIT OF CERTIORARI, AND MAY BE FOUND AT PAGE A - 16 THEREOF.

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

WILLIAM J. WADE, TRUSTEE,	)	
	)	
APPELLANT,	)	
	)	
VS.	)	
	)	
RONNIE HANNON AND	)	
ROSETTA HANNON,	)	
	)	
APPELLEES,	)	
	)	
VS.	)	
	)	
DONALD NEAL RAKE AND	)	Case No. 91-C-477-E,
JEAN RAKE,	)	(Consolidated)
	)	91-C-572-E, and
APPELLEES,	)	91-C-632-E
	)	
	)	
WILLIAM J. WADE, TRUSTEE,	)	
	)	
APPELLANT,	)	
	)	
VS.	)	
	)	
EARNEST WILLIAM YELL AND	)	
MARY KATHRYN YELL,	)	
	)	
APPELLEES.	)	

ORDER

THE ORDER OF HON. JAMES O. ELLISON, UNITED STATES DISTRICT JUDGE, HAS PREVIOUSLY BEEN PRINTED IN THE PETITION FOR WRIT OF CERTIORARI, AND MAY BE FOUND AT PAGE A - 18 THEREOF.

UNITED STATES COURT OF APPEALS
TENTH CIRCUIT

WILLIAM J. WADE, TRUSTEE,	)	
	)	
Appellant,	)	
	)	
v.	)	**No. 92-5005**
	)	
RONNIE HANNON, ROSETTA HANNON,	)	
DONALD NEAL RAKE, LINDA JEAN RAKE,	)	
EARNEST WILLIAM YELL,	)	
MARY KATHRYN YELL,	)	
	)	
Appellees.	)	

Appeal from the United States District Court
for the Northern District of Oklahoma
(D.C. Nos. 91-C-477-E, 91-C-572-E,
and 91-C-632-E (Consolidated))

THE OPINION OF THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT HAS PREVIOUSLY BEEN PRINTED IN THE PETITION FOR WRIT OF CERTIORARI, AND MAY BE FOUND AT PAGE A - 26 THEREOF.